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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,188	06/09/2005	Leo Derici	J3674(C)	3266
201 7590 11/19/2009 UNILEVER PATENT GROUP 800 SYLVAN AVENUE AG West S. Wing ENGLEWOOD CLIFFS, NJ 07632-3100				
EXAMINER				
GULLEDGE, BRIAN M				
ART UNIT		PAPER NUMBER		
1612				
NOTIFICATION DATE		DELIVERY MODE		
11/19/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

### Office Action Summary

**Application No.**

10/538,188

**Applicant(s)**

DERICI ET AL.

**Examiner**

Brian Guldge

**Art Unit**

1612

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-8,10,11,13 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10,11,13 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Previous Rejections*

Applicants' arguments, filed August 17, 2009, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

### *Claim Rejections - 35 USC § 103*

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1, 3-8, 10-11, 13, and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Evans et al. (US Patent 5,837,661) in view of Peffly et al. (US Patent 5,972,356).** Applicant argues that the rejection is not proper. Applicant states that Evans et al. does not disclose the instantly recited silicone polyethylene oxide block copolymers, and Peffly et al. discloses species of silicone copolymers that do not have the minimum number of ethylene oxide units recited by the instant claims. The Applicant further argues that the droplet sizes taught by Peffly et al. lie outside the range recited. The Applicant also argues that the references fail to disclose or suggest the unexpected and enhanced targeted enhancement to the deposition of the conditioning oil at hair tips over deposition at the root region of the treated hair.

The Examiner is not persuaded by these arguments. Evans et al. does not teach the instantly recited silicone polyethylene oxide block copolymers, and Peffly et al. does not teach

the instantly recited drop sizes. However, this does not render the rejection improper. There is no requirement that each reference individually teach all of the instantly recited limitations, rather, the references are taken together. Peffly et al. teaches the instantly recited silicone polyethylene oxide block copolymers, and Evans et al. teaches the droplet sizes. And while Peffly et al. does teach species of silicone polyethylene oxide block copolymers that do not lie within the scope of the claims, which also does not render the rejection improper. Peffly et al. teaches the use of a genus of silicone polyethylene oxide block copolymers, with a molecular weight range that overlaps the instantly recited molecular weight (the number of repeating units for both the polydimethylsiloxane and the number of repeating units for the ethylene oxide subunits) and relative ratios that overlap as well.

As for the Applicants argument that the incorporation of the claimed silicone-polyethylene oxide block copolymer into the composition provides enhanced deposition of the conditioning oil to hair tips, this is not found persuasive. The data presented in the specification compares aqueous formulations with sodium laureth sulphate, cocoamido propylbetaine, the polydimethylsiloxane sold under the trade name DC 200, and one of three silicone polyethers (table 2). The example with a silicone polyether with  $m = 40$  (MW = 4500 Daltons) had improved tip deposition as compared to one with  $m = 12$  (MW = 2000 Daltons).

Neither Evans et al. nor Peffly et al. recognize that a composition with these ingredients would provide selective deposition for hair tips over hair roots, and thus the result demonstrated in the specification is not expected. However, once unexpectedness has been established, the probative value of the evidence as compared to the invention as claimed must be determined, i.e., claims must be "commensurate in scope" with the showing. See MPEP 716.02(d). And the

instant claims are not commensurate in scope with the single example provided. The effect is demonstrated for one species of silicone polyethylene oxide block copolymer, which imparts selectivity in deposition to one species of silicone, in the presence of two particular cationic surfactants, water, and sodium chloride, with no other ingredients being present that may interfere with the selective deposition. The claims recited genera for each of these ingredients much broader in scope with this showing, and the claims encompass amounts of cleansing surfactant (up to 50 wt%) that are significantly more than the disclosed example.

### ***Conclusion***

No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Gullede whose telephone number is (571) 270-5756. The examiner can normally be reached on Monday-Thursday 6:00am - 3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BMG

/Frederick Krass/  
Supervisory Patent Examiner, Art Unit 1612